

§ 563.201 Corporate opportunity.

(a) If you are a director or officer of a savings association, or have the power to direct its management or policies, or otherwise owe a fiduciary duty to a savings association, you must not take advantage of corporate opportunities belonging to the savings association.

(b) A corporate opportunity belongs to a savings association if:

(1) The opportunity is within the corporate powers of the savings association or a subsidiary of the savings association; and

(2) The opportunity is of present or potential practical advantage to the savings association, either directly or through its subsidiary.

(c) OTS will not deem you to have taken advantage of a corporate opportunity belonging to the savings association if a disinterested and independent majority of the savings association's board of directors, after receiving a full and fair presentation of the matter, rejected the opportunity as a matter of sound business judgment.

[61 FR 60179, Nov. 27, 1996]

Subpart H—Notice of Change of Director or Senior Executive Officer

SOURCE: 63 FR 51274, Sept. 25, 1998, unless otherwise noted.

§ 563.550 What does this subpart do?

This subpart implements 12 U.S.C. 1831i, which requires certain savings associations and savings and loan holding companies to notify the OTS before appointing or employing directors and senior executive officers.

§ 563.555 What definitions apply to this subpart?

The following definitions apply to this subpart:

Director means an individual who serves on the board of directors of a savings association or savings and loan holding company. This term does not include an advisory director who:

- (1) Is not elected by the shareholders;
- (2) Is not authorized to vote on any matters before the board of directors or

any committee of the board of directors;

(3) Provides only general policy advice to the board of directors or any committee of the board of directors; and

(4) Has not been identified by the OTS in writing as an individual who performs the functions of a director, or who exercises significant influence over, or participates in, major policymaking decisions of the board of directors.

Senior executive officer means an individual who holds the title or performs the function of one or more of the following positions (without regard to title, salary, or compensation): president, chief executive officer, chief operating officer, chief financial officer, chief lending officer, or chief investment officer. *Senior executive officer* also includes any other person identified by the OTS in writing as an individual who exercises significant influence over, or participates in, major policymaking decisions, whether or not hired as an employee.

Troubled condition means:

(1) A savings association that has a composite rating of 4 or 5, as composite rating is defined in § 516.5(c) of this chapter.

(2) A savings and loan holding company that has an unsatisfactory rating under the OTS's holding company rating system, or that is informed in writing by the OTS that it has an adverse effect on its subsidiary savings association;

(3) A savings association or savings and loan holding company that is subject to a capital directive, a cease-and-desist order, a consent order, a formal written agreement, or a prompt corrective action directive relating to the safety and soundness or financial viability of the savings association, unless otherwise informed in writing by the OTS; or

(4) A savings association or savings and loan holding company that is informed in writing by the OTS that it is in troubled condition based on information available to the OTS.

[63 FR 51274, Sept. 25, 1998, as amended by 66 FR 13008, Mar. 2, 2001]